

MAR 23 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RANDY JACOBSEN,

Plaintiff - Appellant,

v.

DINO CABAL; LYLE WOODWARD;
GREY BATTAGLIA; BUZZ NELSON,

Defendants - Appellees.

No. 04-16152

D.C. No. CV-02-00263-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted February 17, 2006**
San Francisco, California

Before: PAEZ and TALLMAN, Circuit Judges, and KARLTON,***
Senior Judge.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* FED. R. APP. P. 34(a)(2).

*** The Honorable Lawrence K. Karlton, Senior United States District Judge for the Eastern District of California, sitting by designation.

Appellant challenges the award of summary judgment in favor of Dino Cabal, Lyle Woodward, Greg Battaglia, and Berger “Buzz” Nelson on his claim under 42 U.S.C. § 1983, alleging a violation of his First Amendment right to free speech. Only one incident of speech is at issue on appeal: Appellant’s memorandum dated February 24, 2000, which addresses the internal working issues of the Computer Services Department of the University and Community College System of Nevada.¹ We have jurisdiction under 28 U.S.C. § 1291. We review the district court’s grant of summary judgment de novo, viewing the evidence in the light most favorable to the non-moving party. FED. R. CIV. P. 56; *Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672, 675-76 (9th Cir. 2005).

To state a claim against a government employer for violation of the First Amendment, an employee must establish: “(1) that he . . . engaged in protected speech; (2) that the employer took adverse employment action; and (3) that his . . . speech was a substantial or motivating factor for the adverse employment action.” *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th Cir. 2003) (internal quotation marks omitted). An employee engages in protected speech if the speech addresses “a matter of legitimate public concern.” *Pickering v. Bd. of Educ.*, 391 U.S. 563,

¹Appellant waived those issues not addressed in his opening brief. *See United States v. Hickey*, 367 F.3d 888, 890 n.2 (9th Cir. 2004).

571-72 (1968). In contrast, “speech that deals with ‘individual personnel disputes and grievances’ and that would be of ‘no relevance to the public's evaluation of the performance of governmental agencies’ is generally not of ‘public concern.’” *Coszalter*, 320 F.3d at 973 (quoting *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir. 1983)).

Appellant fails to demonstrate that his speech relates to a matter of public concern. His memorandum was limited to concerns with Computer Services personnel and his desire to have access to entertainment-related software. Such personal concerns do not address matters of legitimate public concern. Thus, Appellant’s speech is not entitled to protection. This Court therefore need not address the other elements of the First Amendment inquiry. The district court did not err in granting summary judgment in favor of Appellees.

AFFIRMED.